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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/802,376
Filing Date	March 9, 2001
First Named Inventor	Gary Van NEST, et al.
Group Art Unit	1635
Examiner Name	J. Zara
Total Number Of Pages In This Submission	5
Attorney Docket No.	377882001700

## ENCLOSURES (check all that apply)

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Remarks

## SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual Name	Karen R. Zachow, Registration No. 46,332 Morrison & Foerster LLP 3811 Valley Centre Drive, Suite 500, San Diego, California 92130
Signature	
Date	November 1, 2002

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Diane Blevins

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PATENT  
Docket No. 377882001700

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*Diane Bl*  
Diane Blevins

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Gary VAN NEST and Stephen TUCK

Serial No.: 09/802,376

Filing Date: March 9, 2001

For: IMMUNOMODULATORY  
FORMULATIONS AND METHODS  
FOR USE THEREOF

Examiner: J. Zara

Group Art Unit: 1635

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**RESPONSE TO RESTRICTION REQUIREMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This is in response to the Office Action dated October 3, 2002 (Paper No. 9) which sets forth a restriction requirement for pending claims 1-66 in the above-identified application. A response to this action is due November 3, 2002 (November 3rd being a Sunday). Accordingly, this response is timely filed.

**ELECTION OF INVENTION**

Claims 1-66 are pending in this application. Restriction has been required as between the following allegedly distinct groups of inventions:

Group I (claims 1-11 and 55-66): drawn to compositions comprising an IMP/MC complex; and

Group II (claims 12-54): drawn to methods of immune modulation.

Applicants traverse this restriction requirement on the grounds that the Examiner has not provided adequate support for the division of Groups I and II according to M.P.E.P. §§ 806.03; 806.04.

The separation of the claims of Groups I and II is allegedly supported with the statement that "the different inventions I and II are biologically and functionally different and distinct from each other." Office Action, page 2. Applicants respectfully disagree with this general statement. The product of the Group I claims is an immunomodulatory polynucleotide/microcarrier (IMP/MC) complex comprising a polynucleotide comprising an immunostimulatory sequence linked to a nonbiodegradable microcarrier. The claims of Group II are drawn to a method of modulating an immune response comprising administering an IMP/MC complex. Applicants request that the Examiner support the assertion that the product (Group I) and the method of using the product (Group II) are distinct inventions or withdraw the requirement to separate groups (M.P.E.P. §806.05(h)).

Further, Applicants respectfully traverse the classification differences of Groups I and II. For example, the classification definitions of the Office list compositions in class 435 as involving "immobilized or insolubilized enzyme or a test or culture media." Applicants submit that nothing in the claims leads one to classify the claims of Group I into class 435. Applicants request the Examiner explain the basis for distinguishing the classification of these two groups, when the claimed components are very similar.

Applicants hereby elect Group I (claims 1-11 and 55-66), with traverse with respect to the restriction between Groups I and II. Applicants expressly reserve their right under